(21)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
(DIVISION BENCH)

CORAM : Hon'ble Shri S.R. Nayak, CJ
Hon'ble Shri Satish K. Agnihotri, J.

M.A. No. 839 OF 2005

APPELLANT/NON-APPLICANT NO.3

1) United India Insurance Company Ltd., Divisional Office, One, Gangotri, Fifth Floor, T.T.Nagar, Bhopal, Distt. Bhopal, (M.P.)

Versus

RESPONDENTS

1) Navin Jaiswal, S/o. Mulchand Jaiswal, Aged about 36 years, resident of Tikrapara, Takhatpur, P.S. Takhatpur, Distt. Bilaspur (C.G.)

CLAIMANT

2) Ajay Sharma, S/o. Bhuneshwar Sharma, resident of Kochdih, P.S. Koch, Distt. Gaya, (Bihar), present resident of Sharab Bhatti, Thakatpur, P.S.Thakatpur, Distt. Bilaspur (C.G.)

3) M/s. Harbansh Singh and Sons, Resident of Vaishali Nagar, Bhopal, Tahsil & District Bhopal (M.P.)

NON-APPLICANT NO.1 & 2

4) National Insurance Company Ltd., Resident of B-1, Taha Complex, Priyadarshini Nagar, Bilaspur, Tahsil & Distt. Bilaspur (C.G.)

NON-APPLICANT NO.4

Present:
Mr. H.B.Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, learned counsel for the appellant.

ORAL ORDER
(Passed on 12th of December 2006)

The following Order of the Court was passed by

S.R. Nayak, CJ:

The first respondent herein sustained grievous injuries in an accident occurred on 27.07.2003 involving the motor vehicle owned by the

second respondent and insured by the appellant/Insurance Company. Therefore, the first respondent filed a claim petition under Section 166 of the Motor Vehicles Act 1988. The appellant/Insurance Company contested the claim of the first respondent interalia contending that the first respondent has also contributed negligence in causing the accident. Although, such a plea was taken by the appellant/Insurance Company in the written statement filed by it, admittedly, no evidence was led by the appellant/Insurance Company to prove the above plea. It is needless to state that it is for the person who raises a plea to prove that plea by substantive legal evidence. The plea itself is not an evidence. Therefore, the MACT attributing contributory negligence on the part of the first respondent/claimant in causing the accident could not arise. Even otherwise, it cannot be said that inference of contributory negligence on the part of first respondent/claimant could be made on the basis of the established facts. Looking from any angle, we do not find any merit in the above contention of the Insurance Company. No other point was urged before us to assail the correctness of the impugned award. The appeal is devoid of merit and it is accordingly dismissed. There shall be no order as to costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge